150493

Comptroller General
of the United States

Washington, D.C. 20548

11351711

Decision

Matter of: PCB Piezotronics, Inc.

File: B-254046

Date: November 17, 1993

James D. Bachman, Esq., Doyle & Bachman, for the protester.
Donald C. Campbell, Jr., for Bruel & Kjaer Instruments, Inc., and Eric Saller, for Wilcoxon Research, interested parties.
Stephen H.S. Tryon, Esq., Department of the Navy, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Solicitation's technical evaluation criteria that provide that more credit will be given for proposals offering products that exceed the specifications in certain respects within the designated relative evaluation weights is not improper.

2. Protest that solicitation was defective for failing to disclose the relative evaluation weight of cost, which was first raised in the protester's comments on the contracting agency's report after the closing date for receipt of proposals, is dismissed as untimely.

3. Protest that solicitation specification for accelerometers does not provide sufficient details regarding the required quality control plan requirement is denied where the specifications were intended to be flexible with regard to the specific details of the quality control plan given the different processes which could be used to manufacture the item.

4. Protest that first article test requirement is unreasonable is denied where the test is necessary to satisfy the agency that the contractor will meet agency requirements.

DECISION

PCB Piezotronics, Inc. protests the terms of request for proposals (RFP) No. 61533-93-R-0025, issued by the Department of the Navy, Naval Surface Warfare Center, for accelerometers.

We deny the protest in part and dismiss it in part.

The Navy issued this RFP on April 30, 1993, to procure a minimum of 100 up to a maximum of 3,000 low noise, internally amplified accelerometers under a fixed price, indefinite delivery/indefinite quantity contract. An accelerometer is a device that measures acceleration, which the Navy intends to use to collect acoustical data on the vibratory signatures of Navy nuclear submarines. The RFP required the contractor to design and manufacture the accelerometers in accordance with detailed performance requirements. The contractor also is required to develop a detailed first article test that will address each of the specified test parameters and to successfully test its proposed accelerometer.[1]

Under the RFP, award is to be made on a best value basis, considering cost, price and other factors. The designated technical evaluation factors are Technical Understanding and Corporate Capabilities with Technical Understanding having 9 times greater value than Corporate Capabilities. Subfactors are listed in descending order of importance under each technical factor and the relative weights of these subfactors disclosed. The Technical Understanding factor has five listed subfactors, the first of which is 2 times more important than each of the next three factors, which are of equal importance to one another and which are of greater importance than the fifth subfactor.

From May 12 to July 9, PCB wrote numerous letters to the Navy asking questions and seeking clarification of the RFP's provisions. The Navy responded to each of these letters. The closing date for receipt of proposals was extended a number of times to respond to PCB's concerns. PCB filed

---

[1]The RFP noted that because of the critical application of the accelerometer to assure that Navy nuclear submarines minimized vibration, it was imperative for the accelerometers to be very rugged, very sensitive, and of high quality. The first article tests were therefore intended to ensure that the accelerometers could be reliably used for Navy acoustical testing. The RFP provided that if, during the first article testing the accelerometer failed any test, the contract would be terminated.

this protest with our Office on July 9, raising a variety of objections to the RFP, many of which were the subject of its previous queries. Proposals were received on July 12. Although PCB did not submit a proposal, the Navy reports that competition was obtained.

PCB first protests the evaluation plan as described in section M of the RFP as follows:[2]

> "Solicitation Section M Evaluation Factors for Award states: For this procurement, award will be made to that responsible offeror submitting a technically acceptable proposal with the highest score . . . relative to achieving additional points for exceeding specifications. In [a] letter [dated] 11 June [19]93 [the Navy] states solicitation specifications will be the basic requirements of any resultant contract.[3] The letter answer is totally inconsistent with the solicitation award provision. What's more, the Evaluation Plan encourages running up costs and bid price to exceed specifications, when the exceeded specification is not the basis for the award! Any award that can be so arbitrarily applied is not full and open competition."

This protest basis concerns the fact that the RFP evaluation criteria provides that more credit and a higher score will be given under certain technical subfactors to offerors

---

[2]PCB's initial protest was filed pro se. After receipt of the agency report, comments were submitted by PCB's counsel.

[3]The referenced Navy response actually read as follows:

> ". . . [the Navy] intends to achieve full and open competition based on every offeror being provided with the same information and the same opportunity to provide an adequate proposal to disclose their particular intentions and specifications. . . . A proposal that exceeds the minimum specifications provided will receive additional points. The offeror's specifications will be taken into consideration and may be incorporated in the resultant contract. However, the solicitation specifications will be the basic requirements of any resultant contract. Since all offerors are given the same opportunity and information to provide a proposal, it will be the contractor's initiative, experience and capabilities that determine the best available product to [the Navy]."

whose proposals offered products that exceeded the minimum specification requirements. For example, some of the subfactors of the Technical Understanding factor of the RFP include:

> "(a) Overall Design - Offerors will be evaluated on the robustness and ruggedness [of] the accelerometer system. This evaluation will examine the cable connector system as well as the design of the signal transmission electronics. A simple, robust design that is well suited for at-sea testing will be awarded a higher score.
>
> "(b) Output noise - Offerors will be evaluated on the output noise with no vibration input. The specifications are .25ug[1] and a design with lower noise levels will be awarded a higher score."

As clarified in its comments on the report, PCB argues that the RFP is defective because this evaluation scheme does not disclose how much extra credit would be given under each subfactor where the minimum specification requirements are exceeded.

While a solicitation must advise offerors of the broad scheme of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors and significant subfactors, the precise numerical weight to be used in the evaluation need not be disclosed. See Essex Electro Eng'r, Inc, B-252288.2, July 23, 1993, 93-2 CPD ¶ 47; Contract Servs., Inc., B-251761.4, July 20, 1993, 93-2 CPD ¶ 40. The RFP's disclosure of the subfactor's relative weights satisfies the agency's obligations in this case. We find nothing improper in the evaluation scheme disclosed in this RFP that offers extra credit within the specified relative evaluation weights for proposals that exceed certain minimum specifications identified in the RFP. See Transact Int'l, Inc., B-241589, Feb. 21, 1991, 91-1 CPD ¶ 196. While PCB questions how the government will enforce proposals that exceed the specifications, the agency advised PCB that it intends that the awardee's proposal will be incorporated into the resulting contract.

In comments submitted by counsel, filed after the closing date for receipt of proposals, PCB protests that the importance of the cost/price was not disclosed in the RFP. The protester asserts that this protest basis was within the scope of that portion of PCB's initial protest quoted above.

---

[1]ug is a micro unit for the measurement of the acceleration of gravity.

In responding to this contention, the Navy admits that the RFP was defective in this respect and has amended the RFP to correct this problem. The Navy nevertheless argues that PCB's protest on this point is untimely because PCB did not protest this point prior to the closing date for receipt of proposals.

We agree with the Navy and dismiss this aspect of PCB's protest. Our Bid Protest Regulations require that protests apparent from the face of the solicitation be filed prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1993). Where a protester supplements its protest with new and independent allegations, those allegations must independently satisfy our timeliness requirements; our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Mennen Medical, Inc., B-246764 et al., Apr. 2, 1992, 92-1 CPD ¶ 341.

Contrary to PCB's argument, its initial protest, as quoted above, concerned the fact that extra credit would be given under the technical subfactors for proposals that exceeded the minimum specifications. While it is true that PCB's initial protest observed that this scheme encouraged "running up costs" to exceed the specifications, this statement does not constitute, or even imply, a protest that the importance of cost/price was not disclosed in the RFP. The earlier correspondence between PCB and the Navy prior to the protest confirms that PCB's concern was whether an offeror's proposal to exceed the specifications was proper and whether the proposal would become a part of the resulting contract. For example, PCB asked "how does [the Navy] expect to validate a proposal claim for exceeding the specifications for which additional points are given and which could result in a subsequent contract award" and "since the contract will be awarded to the basic solicitation specifications, of what possible value would it be for an offeror to run up cost resulting in a higher bid price to exceed specifications, when the exceeded specifications is not the basis for the award?" Nowhere in its exhaustive pre-proposal opening correspondence or in its timely initial protest did PCB express concern about the relative weight of cost in the evaluation. Thus, this protest basis is untimely and will not be considered.[5]

---

[5]We also reject PCB's challenge to the Navy's action in issuing the amendment only to the offerors who submitted proposals by the initial closing date and not reopening the competition. As discussed in the decision, PCB did not express concern about the weighting of cost versus technical prior to initial offers, and there is no basis to believe that PCB declined to offer because of this problem.

PCB next argues that the RFP's quality control plan requirements are unclear because neither the required details of offerors' quality control plans nor their significance in the evaluation scheme was disclosed in the RFP. The RFP contained the following requirements relating to the quality control plan:

> "2.4) . . . the contractor shall submit a quality control plan. In this plan, the contractor shall detail the specific actions that they will take to ensure that the quality of the accelerometer to be made is consistently high.
> [and]
>
> "3.3) Provide one (1) quality control plan where the contractor shall detail the steps they will take to ensure the quality of the accelerometer to be made will be consistently high."

The Navy reports, and the protester confirms, that accelerometer manufacturers employ different manufacturing methods. Thus, the Navy states that the specifications were designed to provide offerors with the flexibility to propose a quality control plan consistent with their manufacturing processes, and that it anticipated that each offerors' plan would contain different details. The Navy reports that it will scrutinize each offeror's proposed plan to ensure that the offeror's plan will meet its requirements.

Under the circumstances, we think that the Navy's decision to provide offerors the discretion to propose a control plan that the offeror believed would best meet the Navy's contract requirements was reasonable. See U.S. Defense Sys., Inc., B-248845, Sept. 23, 1992, 92-2 CPD ¶ 197. While PCB argues that the RFP failed to denote the significance of the quality control plan requirement in the evaluation, the RFP, under the Technical Understanding evaluation factor, advised that the proposal must demonstrate knowledge and understanding of each requirement specified in the statement of work, which includes the quality control plan requirements. Thus, we think the requirements for, and consideration of, the quality control plan were adequately disclosed in the RFP.

PCB next asserts that the specifications were deficient because the Navy allegedly neglected to specify the requirements for the optional accelerometers with sensitivities of 2.5 V/g[6] and 250 mV/g,[7] which the RFP

---

[6]V/g is the number of volts per unit of measurement of the acceleration of gravity.

specifications state will make up approximately 10 percent of the projected contract quantity.[8] However, the Navy reports, and our review confirms, that the RFP specifications require the optional sensitivity accelerometers to meet the same requirements as the basic sensitivity accelerometers.

PCB also asserts that the transverse sensitivity test that the contractor's test accelerometer must meet as one of the first article test requirements is unreasonable and will preclude full and open competition. Under the RFP, the contractor is required to test the transverse sensitivity of the test accelerometer to ensure that it is less than 5 percent of the axial sensitivities at all frequencies within a specified range. For this purpose, the RFP states that the government will furnish the contractor with a Bruel & Kjaer (B&K) 8305 reference accelerometer, along with the reference accelerometer's National Institute of Science and Technology (NIST) traceable calibration. PCB maintains that there is no method for accurately testing accelerometers within the frequency range required by the first article requirements and that the B&K reference accelerometer cannot accurately conduct this test.[9]

The contracting agency which is most familiar with its needs and how best to fulfill them must make the determination as to its needs in the first instance. Similarly, it must determine the type and amount of testing to ensure that a particular product will meet those stated needs. See Hewlett-Packard Co., B-245408, Jan. 6, 1992, 92-1 CPD ¶ 27; Charles J. Dispenza & Assocs., B-183131, Apr. 16, 1975, 75-1 CPD ¶ 229.

Here, the Navy reports that it has been able to reliably measure accelerometers with similar tolerances in the past, and notes that the reference accelerometer will be calibrated by an NIST facility and certified to ensure that the reference accelerometer is acceptable for the test. In

---

[7](...continued)
[7]mV/g is the mili volts per unit of measurement of the acceleration of gravity.

[8]The RFP provided that the basic sensitivity for accelerometers is 25 V/g with the optional capability for accelerometers with 2.5 V/g and 250 mV/g sensitivity.

[9]For example, PCB points out that the specification sheet the B&K reference accelerometer does not unequivocally reflect that the accelerometer can measure transverse sensitivity within the range required by the first article requirement.

addition, the contractor is free to use its own NIST approved accelerometer to conduct the test. Although PCB has offered the opinion of an expert about the alleged impossibility of testing at the frequency ranges required, the Navy reports that this is not a widely held view and notes that this same expert is included in one of the competing offeror's proposals as the chief engineer for conducting the test. Based on this record, we find reasonable the Navy's position that the testing procedure is appropriate to assure the Navy that the contractor's accelerometer will satisfy its requirements.

PCB's underlying concern is that the specifications provide B&K, who has previously provided accelerometers to the Navy for this application, with an unfair competitive advantage. PCB also speculates that B&K was funded by the Navy to develop an accelerometer meeting the test procedures contemplated by the first article requirement, in particular the transverse sensitivity test, and it should therefore be excluded from competing. These contentions have no merit. As discussed above, PCB has not pointed to any RFP requirement that is unduly restrictive, and there is no credible evidence that PCB was funded by the Navy to develop the particular first article test for this procurement or that it drafted the specifications.

The protest is denied.

James F. Hinchman
General Counsel